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**FISCAL IMPACT STATEMENT**

**LS 7756**

**BILL NUMBER:** HB 1265

**NOTE PREPARED:** Mar 31, 2005

**BILL AMENDED:** Mar 31, 2005

**SUBJECT:** Justification for Rulemaking.

**FIRST AUTHOR:** Rep. Pond

**FIRST SPONSOR:** Sen. Dillon

**BILL STATUS:** CR Adopted - 2<sup>nd</sup> House

**FUNDS AFFECTED:** X GENERAL  
X DEDICATED  
FEDERAL

**IMPACT:** State

**Summary of Legislation:** (Amended) This bill has the following provisions:

(A) It requires an agency that publishes a notice of intention to adopt a rule that imposes a requirement or cost on a regulated entity to include in the notice a statement justifying the requirement or the cost.

(B) It provides that the statement must include a reference to any data, studies, or analyses relied upon by the agency in determining that the imposition of the requirement or cost is necessary.

(C) It requires a state agency to assign a small business regulatory coordinator for each administrative rule proposed or adopted by the agency.

(D) It requires the agency to list the coordinator's contact information in certain published notices and rules.

(E) It requires the coordinator to serve as a liaison between the agency and small businesses subject to the rule.

(F) It requires, in the case of a rule adopted by the Department of Environmental Management (IDEM) or its boards, the coordinator for the rule to work with IDEM's ombudsmen and Office of Voluntary Compliance to coordinate services provided to affected small businesses.

(G) It requires an agency's director to submit an annual report to the Legislative Council and the Indiana Economic Development Corporation concerning the activities of the agency's coordinators during the state fiscal year.

(H) It provides that a small business that gives voluntary notice to an agency of a violation of a rule is immune from civil or criminal liability resulting from an agency action relating to the violation if the small business:

- (1) provides the notice within 45 days after discovering the violation;
- (2) corrects the violation within the time agreed to by the agency and the small business; and
- (3) cooperates with any investigation by the agency.

(I) It provides that immunity is not available if:

- (1) the violation resulted in serious harm or endangered the public;
- (2) the small business received a competitive advantage; or
- (3) the small business has a pattern of rule violations.

(J) It provides that certain information provided by a small business relating to a rule violation is confidential.

(K) It provides that voluntary notice of a rule violation by a small business is not admissible as evidence, other than in an agency proceeding, to prove liability.

**Effective Date:** July 1, 2005

**Explanation of State Expenditures:** *Provisions A and B:* The bill may minimally increase administrative costs for state agencies that adopt rules. Under current law, an agency must (1) publish a notice of intent to adopt a rule and (2) estimate the economic impact that compliance with the proposed rule will have on all regulated entities. Under the bill, the agency would have to prepare a statement justifying the requirement or cost imposed on a regulated entity that is not part of state or local government to be included in its notice.

*Background:* If the estimated economic impact for compliance on all regulated entities is greater than \$500,000, the agency must submit the proposed rule and all supporting information to the Legislative Services Agency (LSA) for an analysis. Review of the analyses prepared by LSA during 2003 and 2004 indicates that of the 19 fiscal impact statements, 10 imposed a requirement or cost on a regulated agency that was not an instrumentality of state or local government.

(Revised) *Small Business Regulatory Coordinator:* The bill is expected to increase administrative costs for agencies with rulemaking authority to provide small business regulatory coordinators and to compile the required reports. The funds and resources required could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; or (5) new appropriations. Ultimately, the cost of providing small business regulatory coordinators and administration of rules process under the bill will depend on the administrative actions of the agency with rulemaking authority.

*Background:* The bill would require one small business regulatory coordinator with knowledge of, or experience with, the subject matter of the rule for each proposed or adopted rule. The bill would allow a staff person to be the coordinator for more than one rule, as long as the person has sufficient knowledge or experience for each rule assigned. Additionally, the agency director must prepare a report by November 1 each year that summarizes complaints, comments, and questions received; the resolution of any complaints or questions; the total number of staff serving as coordinators; the agency's cost of compliance; and a project budget to comply with the requirements of this bill during the next state fiscal year.

**Explanation of State Revenues:**

**Explanation of Local Expenditures:**

**Explanation of Local Revenues:**

**State Agencies Affected:** Agencies with rulemaking authority; Indiana Department of Environmental Management.

**Local Agencies Affected:**

**Information Sources:** [www.in.gov/legislative/ic\\_iac/arfisindex.jsp](http://www.in.gov/legislative/ic_iac/arfisindex.jsp)

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